IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

Crl.MC.No. 209 of 2007()

MC.30/2006 of SUBH DIVISIONAL MAGISTRATE KASARAGOD AT KANHANGAD

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PETITIONER: ACCUSED:

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1. MUHAMMED ARIF (18 YEARS),
   S/O. YUSUF, THAHIRA MANZIL, HIDAYATH NAGAR,UPPALA.

2. SUHAIL F. (19 YEARS),
   S/O. FAKRUDEEN, K.J.N. (H) HIRAPAPALLI,
   KURICHIPPALLAM, UPPALA.

3. NAZEER M. (19 YEARS),
   S/O. C.P.MOHAMMED, AZIZ MANZIL, HIDAYATH NAGAR,
   UPPALA.

4. NOUFAL B.,
   B.M.IBRAHIM, MUNEERA MANZIL, PULIKUTHI, BEKOOR.

5. JEMMI @ MOHAMMED SAMEER (19 YEARS),
   S/O.IBRAHIM, SABIR MANZIL, KUNDUPINI (H),UPPALA.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REP. BY C.I. OF POLICE, KUMBLA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.LATHA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.209 of 2007

Dated this the 25th day of January, 2007

ORDER

The petitioners are counter petitioners 1 to 5 in a proceedings initiated under Section 107 Cr.P.C. Preliminary orders have been passed by the Sub Divisional Magistrate after following the procedure prescribed by law. In the preliminary order it is alleged that two crimes have been registered against the petitioners and they are indulging in acts which are likely to cause breach of the peace and disturb public tranquility in the locality. The allegation is that the petitioners have committed offences, inter alia, punishable under Sections 3 of the SC/ST (PA) Act. The order only directs the petitioners to appear and show cause before the Sub Divisional Magistrate as to why they should not be called upon to execute bonds for keeping the peace. The petitioners are not visited with any specific adverse order. They are only called upon to explain why such orders should not be passed against them. Ordinarily and normally, I would expect the petitioners to appear before the Sub Divisional Magistrate and raise their contentions. This does not mean that in an appropriate case, where failure/miscarriage of justice is apprehended or such possibility is perceived, this Court cannot invoke the powers under Section 482 Cr.P.C. But that must be an appropriate and exceptional case and compelling reasons must be shown to exist.

2. What are the reasons in this case ? The first contention is that the allegations are false. That dispute cannot be authentically resolved by this Court at the moment and with the available inputs. The second contention is that the alleged offences are primarily under Section 3 of the SC/ST (PA) Act. They cannot be reckoned as offences which are likely to occasion a breach of the peace and disturbance of public tranquility. The records show that the relevant crimes are registered, inter alia, under Sections 341 and 323 I.P.C also. But I will assume for a moment that only allegations under Section 3 of the SC/ST (PA) Act are raised against the petitioners in the crime. Even then, likelihood of commission of offence under Section 3 of SC/ST (PA) Act, cannot be reckoned as insufficient to attract proceedings under Section 107 Cr.P.C. It would be presumptuous for the Court to now assume that the commission of the offences under Section 3(1) of the SC/ST (PA) Act is not likely to disturb the public tranquility or occasion a breach of the peace.

3. I shall carefully refrain from making any observations on merits on the disputed questions of fact. Suffice it to say that I do not find any circumstances which would justify the invocation of the powers under Section 482 Cr.P.C in favour of the petitioners to prematurely terminate the proceedings under Section 107 Cr.P.C initiated against them. They must appear before the Sub Divisional Magistrate and raise their contentions.

4. This Crl.M.C is, in these circumstances, dismissed. I may hasten to observe that the dismissal of this Crl.M.C will not in any way fetter the rights of the petitioners to raise all appropriate and necessary contentions before the Sub Divisional Magistrate.

(R.BASANT, JUDGE)

rtr/-